

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Michael A. SHARP

Serial No.: 09/765,985

Filed: January 19, 2001

For: Method and Apparatus for Embedding
 Advertisements in Audio Files for
 Internet and Network Distribution

§ Confirmation No: 1204
 § Group Art Unit: 3622
 § Examiner: James W. MYHRE
 § Atty. Dkt. No: 1002-001.00
 § Client Dkt. No: 65-1

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 23313-1450

DECLARATION UNDER RULE 1.131

I, Michael Sharp, declare:

1. I am the sole inventor of the above-identified application.
2. Attached hereto is evidence that the invention claimed in this application was reduced to practice prior to September 3, 1999, which is the effective date of U.S. Patent 6,351,736 ("Weisberg"). The attached evidence is:
 - Exhibit A: "AMP3.com and AudioSoft Join Forces to Bring Back the Single; The Fastest-growing New MP3 Site On the Internet Now Offers E-commerce to Visitors and Copyright Security for Artists". Business Wire. March 18, 1999. FindArticles.com. 05 Feb. 2008. http://findarticles.com/p/articles/mi_m0EIN/is_1999_March_18/ai_54142575
 - Exhibit B: Matt Richtel, "Some Free Music Sites Start Paying Artists". New York Times. Nov. 12, 1999. <http://www.nytimes.com/library/tech/99/11/cyber/articles/16music.html>
3. Exhibit A, which is dated March 18, 1999, states (emphasis added):

Artists receive a two-cent royalty per *download*. ... If a potential advertiser decides to sponsor a particular song *by placing a short jingle ad to be played before the song*, AMP3.com and the artist split the profits.
4. Exhibit B, which is dated November 12, 1999, states:

Offering free music seems to be working for AMP3.com, which serves up as many as 40,000 downloads a day. Michael Sharp ... launched the site in February, and now pays artists a nickel each time one of their songs is downloaded. The site pays for the songs by putting a short ad at the beginning of each downloaded music file.

5. Based upon my review of Exhibits A and B, as well as my personal knowledge and recollection of the events referenced therein, the invention claimed in this application was reduced to practice prior to September 3, 1999, which is the effective date of Weisberg.
6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

SIGNED:

Inventor's signature:



Date: Feb 5, 2008

Full name of inventor:

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EXHIBIT A

AMP3.com and AudioSoft Join Forces to Bring Back the Single; The Fastest-growing New MP3 Site On the Internet Now Offers E-commerce to Visitors and Copyright Security for Artists

AUSTIN, Texas--(BUSINESS WIRE)--March 18, 1999--AMP3.com, the world's fastest-growing new MP3 Web site on the Internet, today announced a joint venture with AudioSoft, the pioneering developer of secure music distribution systems via digital networks. AMP3.com's Web site features more artists -- close to 1,000 performers -- than any of the five major record labels.

Under terms of the new agreement, AMP3.com (www.amp3.com) and AudioSoft (www.audiosoft.com) will work together to create an e-commerce reporting and payment system for the AMP3.com site. This will allow audiophiles to purchase music singles for 99 cents over the Internet in a completely secure environment. Visitors can also download songs for free and know that they are not infringing upon any copyright laws.

The system will also enable AMP3.com to track purchases, allocate copyright payments and accurately report back to the artists. What separates AMP3.com from other MP3 sites is that with AMP3.com, artists actually make money, whether listeners decide to buy their songs or not. Artists receive a two-cent royalty per download. Popular songs are downloaded tens of thousands of times, so royalties can be significant.

MP3 is a downloadable music format that stores audio files on a computer, keeping the file size small but retaining near CD-quality sound.

"In addition to the downloading royalties, we split our advertising income with the artists. If a potential advertiser decides to sponsor a particular song by placing a short jingle ad to be played before the song, AMP3.com and the artist split the profits 50-50," explains Michael Sharp, CEO of AMP3.com.

This cooperation with AudioSoft will now enable visitors to purchase a particular song that they like. "Instead of having to go to your local Blockbuster Music store and buy a CD for \$16, you can now just buy the song you like for 99 cents at AMP3.com.

"No wonder the record industry is panicking. With the help of AudioSoft, anyone can come to AMP3.com and download their favorite music for free. Every song comes with a 3-5 second jingle. If you really like the song, you can now purchase it online for 99 cents, without the jingle before the song," Sharp says.

The new system also solves many copyright issues. "The world of music has been a jungle on the Internet. The biggest problem has been the illegal piracy of music on the Internet," Sharp notes.

"The single is what built the record business, hit by hit," said AudioSoft CEO Francois-Xavier Nuttall. "The MP3 format lets music fans buy songs the way they have always wanted to, one great track at a time. Using the Internet, AMP3.com is leading the music industry back to its roots, and AudioSoft is helping to ensure that artists get paid for every song they sell."

By compensating artists, AMP3.com can secure a better selection of music than other MP3 sites. And by offering a better audio selection, the site is increasing visitor traffic and creating a more attractive target for advertisers. AMP3.com receives approximately 2 million hits per month, and is growing rapidly.

About AMP3.com

AMP3.com is the fastest growing new MP3 site on the Web today. It has become a portal for artists to distribute their music. AMP3.com offers free downloading of music in a secured, copyright covered environment where the musician gets paid per download and music fans can enjoy a wide selection of music.

About AudioSoft

AudioSoft is a software developer and content aggregator dedicated to the secure electronic distribution of music over digital networks with full copyright protection and management. AudioSoft operates a distribution channel for audio over high-bandwidth networks and over the Internet (www.citymusic.com), and provides the music industry with secure solutions and tools to distribute music from their own Web sites. The company's innovative software products includes Virtuosa Gold, the world's first all-in-one MP3 Player, CD Ripper and CD Burner (www.virtuosa.com).

For additional information, please contact David Whitman of Merger Communications at 713/267-2328 (www.mergerusa.com), or Amy Bonetti of Big Mouth Communications at 415/837-1900.

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EXHIBIT B

Technology | CYBERTIMES

The New York Times

Home

Site Index

Site Search

Forums

Archives

Marketplace

November 12, 1999

Some Free Music Sites Start Paying Artists

By MATT RICHTEL 

On the Internet, the starving artist is going a bit less hungry these days. Several Web sites that offer free downloads of music by unsigned artists have started paying the artists a few pennies each time their songs are downloaded.

MP3.com, the largest of these sites, is dividing up \$200,000 among the thousands of artists whose music it offers. Payouts are based on the number of times each artist's songs are downloaded in November. A Texas startup called AMP3.com, whose proprietor claims to have pioneered the concept, has paid artists a nickel per download for the last six months.

While the amount of money is insignificant, the trend it represents may not be. The music sites, which get much of their revenue from advertising, are seeking ways to differentiate themselves and win the loyalty of the garage bands and home-studio enthusiasts that provide their content. The payments indicate they are showing a greater appreciation for the no-name bands that have largely been a commodity on the Web.

If the concept does not turn out to be a profitable one for the sites -- and some industry analysts believe it will not be -- the payouts may just raise the expectations of unsigned musicians, who until now have seemed happy just to get online exposure.

"It's wonderful that they're sharing their wealth with some of the artists," said Ron Wasserman, keyboard player and co-producer for Fisher, one of the most popular bands on MP3.com. "But," he added, "if they do it only for one month and pull it back, it'll be a shame." Wasserman said the band is earning roughly \$70 a day from the program.

On Monday, the Internet Underground Music Archive, a unit of EMusic.com that is one of the oldest major music sites, touted its own new revenue-sharing program and criticized MP3.com's one-month-only plan. The site plans to start giving artists 25 percent of the revenue from ads on their pages in December.

MP3.com's promotion is "a good start, but not good enough," said Jeff Patterson, IUMA's founder. "We challenge MP3.com and other emerging artist Web sites to match our offer and pay their unsigned artists fairly for the banners they show on their pages."

The compensation plans highlight the scramble for a viable business model in the online music scene, one of the most dynamic areas of the Internet. Seeking to capitalize on a growing constituency of younger and college-aged listeners, music sites are experimenting with giving away music, hawking singles for download and selling sponsorships and advertising on their pages.

Universal Music Group, the world's largest record company, said last week that it is creating a site to promote the work of little-known bands, making it the first major record label to step into this area. Its site, Jimmy and

Digital Music



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Doug's Farmclub.com, will have promotional backing from America Online, USA Networks, MTV and the Coca-Cola Co.

The site does not plan to pay each participating band when it launches on Feb. 1, but it will offer popular acts the chance at a contract with a special Universal record label. Universal executives said the site was designed to better connect the company with both new artists and music consumers, while generating advertising revenue.

In a similar plan, Garageband.com will soon award a \$250,000 recording contract to the band on its site with the best reviews from listeners. Next year it plans to award a similar prize every month. The site has devised a "reward points" program that lets visitors earn points for reviewing songs. The points can be traded for prizes like T-shirts and electronics.

The company is charging 12 cents per ad, meaning artists are getting about 40 percent of the revenue.

The advantage of these plans is that they do not require Web surfers to pay for music, allowing them to listen to artists they may not otherwise have checked out.

"Once you begin [charging] for downloads for unsigned artists, it is going to go downhill," said Scott Meldrum, a musician who is a veteran of numerous MP3 sites and a chart-topper at MP3.com.

Offering free music seems to be working for AMP3.com, which serves up as many as 40,000 downloads a day. Michael Sharp, a 41-year-old former musician in Kingwood, Tex., launched the site in February, and now pays artists a nickel each time one of their songs is downloaded.

The site pays for the songs by putting a short ad at the beginning of each downloaded music file. "Whenever you download a song, you hear, 'Things go better with Coca-Cola,' and then the song starts," Sharp said. (Actually, Coca-Cola is not an advertiser, though Microsoft is.)

Sharp said the company is charging 12 cents per ad, meaning artists are getting about 40 percent of the revenue. Sharp called the concept "the perfect Internet business model," because the consumer does not pay for music, but both distributor and artist get paid through advertising dollars.

Industry analysts and competitors are not convinced. One criticism is that these programs do not actually create band loyalty because the deals are not exclusive. Bands continue to have every incentive to sign up with as many sites as possible to distribute their music.

A second criticism is that despite reviews and top-10 lists, the music sites have not really solved the problem of overwhelming listeners with thousands of bands. Finally, and perhaps most pressing, critics assert the sites cannot long go on paying musicians unless they can succeed in establishing consistent revenue streams themselves -- something that would require them to look beyond advertising.

"At some point this doesn't make financial sense," said Mark Mooradian, senior analyst with Jupiter Communications, a research firm in New York. "And it doesn't solve the most critical factor, which is the noise factor."

At the same time, Mooradian called the experiments with advertising-supported models "an interesting foray" into the middle ground of bands between two extremes: bands that have signed contracts with record labels and those that earn nothing churning out songs for the infinite concert hall that is the Net.

Inhabitants of that middle ground could not agree more. Meldrum, who makes \$5 to \$10 a day in download payments from various sites, called the concept "a valiant effort" and said it would let him invest in equipment. "Now you can start to justify spending money to make money," he said.

Related Sites

These sites are not part of The New York Times on the Web, and The Times has no control over their content or availability.

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- [AMP3.com](#)
- [Garageband](#)
- [Liquid Audio](#)
- [Internet Underground Music Archive](#)

Matt Richtel at mrichtel@nytimes.com welcomes your comments and suggestions.

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